

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2225 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-

and

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements? YES
  2. To be referred to the Reporter or not? YES :
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement? NO
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder? NO
  5. Whether it is to be circulated to the Civil Judge? : NO  
NO

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WORKMEN OF WIPS DIVISION

Versus

AMBALAL SARABHAI ENTERPRISES LTD.

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Appearance:

MR SK JHAVERI for Petitioner

MR KS NANAVATI WITH MR KEHUL GANDHIA for

Respondent No. 1

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CORAM : MR.JUSTICE B.C.PATEL

and

MR.JUSTICE D.H.WAGHELA

Date of decision: 29/02/2000

ORAL JUDGEMENT (Per D.H.Waghela, J.)

Heard the learned counsel for the parties. This writ petition under Article 227 of the Constitution of India is filed by the trade union representing the workmen of the respondent company. It challenges the award of the Labour Court, Ahmedabad in Reference (LCA-D) No.18 of 1986. The workmen of a division of the respondent company had raised several demands against the division of the respondent company and upon failure of the conciliation, the demands were referred for adjudication by the appropriate Government to the Labour Court. The demands relate to increasing monthly salary, dearness allowance, house rent allowance, conveyance allowance, sick leaves and casual leaves. After examining witnesses and considering evidence, the Labour Court has granted the first demand of increasing the salaries with effect from 1.1.1986 and rejected the rest of the demands by the award made on 12.9.1988.

2. Challenging the award as made above, the petitioner has contended that earlier the variable dearness allowance being paid to the workmen was merged into the salary unilaterally and without issuing a notice of change. It is contended and emphasised before us that the Labour Court has not properly appreciated this fact and not taken into account this material factor while deciding the reference. It was also submitted that the industry-cum-region principle was not properly applied and the Labour Court had erred in treating the respondent as a small independent unit. Thus, the petitioners have mainly concentrated on the grievance regarding demands of increasing monthly salary and dearness allowance.

3. After the present petition was admitted in 1991, it was dismissed in 1993 and restored thereafter. The respondent company has, by filing an affidavit-in-reply, sought to bring on record the facts that the division to which the industrial dispute related has been an independent establishment and is closed with effect from 30.12.1989. It is further stated that the employees employed in the establishment have been paid the closure compensation and necessary intimation about the closure is sent to the authorities concerned, such as, the Regional Provident Fund Commissioner, Chief Inspector of Shops and Establishments Department, Sales Tax Officer etc.

4. It has to be noted that the terms of reference quoted in the impugned award reads as under:

"1. Whether an increase in monthly salary of workmen is necessary? If yes, how much

and since when?

2. Whether the demand of workmen for dearness allowance is genuine? If yes, how much and since when?
3. Whether the workmen should be paid house rent allowance? If yes, how much and since when?
4. Whether the workmen should get conveyance allowance? If yes, how much and how?
5. Whether it is necessary to increase in the present leave of sickness to the workmen? If yes, how much and since when?
6. whether it is necessary to increase the number of casual leave as at present? If yes, how much and since when?"

5. The workmen have, in their statement of claim, quantified the demand of increase in wages and claimed that an increase of Rs.200 per month in wages with effect from 22.8.1984 would be just and proper. As for the dearness allowance, the demand is made at Rs.225 per month. The house rent allowance and the conveyance allowance are demanded at the rate of Rs.100 per month instead of Rs.50 and there is a further claim of 20 days sick leave and 15 days of casual leave. The respondent employer has submitted before the Labour Court that the dearness allowance was merged in fixed salary and consolidated grade with increase every year was given to the workmen. In addition to it, since September 1983, a variable compensatory allowance depending on cost of living index starting with Rs.50 is also given. Such allowance is paid at the rate of Rs.162 with effect from 1.4.1986 and was revised at an interval of three months on the basis of cost of living index. The employer had also introduced a reimbursement scheme with effect from 1.4.1978 which translated into payment of 10% to 25% of the consolidated salary. Such reimbursement was towards house rent allowance, medical expenses etc. Otherwise, the division was governed under the provisions of Bombay Shops & Establishment Act and hence the benefits of leave etc. were admissible under that Act. The workmen and the company have led oral and documentary evidence and the Manager has deposed that there was loss in the years 1984-85 and 1986-87. Considering the evidence, the Labour Court has noted that the workmen have not asked for revision of pay scale and the witness of the workmen

has merely stated that the pay scales are low. The employer-unit has no other business except that of selling electric goods of other companies. The settlements and the pay scales cited before the Labour Court for comparison were of far larger companies and were not comparable to the present employer unit engaged in dealership and trading. In these circumstances, it was emphasised before the Labour Court on behalf of the workmen that they should at least get the pay scale which prevailed in the corporate office of the employer company. However, the Labour Court has also noted that the pay scales in the corporate office were not better. However, considering the fact that the employer was making handsome profits except for the period from 1.7.1984 to 30.6.1985, a rise of Rs.80 per month to the employees whose basic salary at the minimum in the pay scale was upto Rs.500 and a rise of Rs.100 to the employees whose basic salary at the minimum in the pay scale was more than Rs.500, was awarded. As regards the dearness allowance, the Labour Court concluded that the workmen had failed to justify and substantiate by any evidence the demand of separate dearness allowance in view of the fact that the employer was giving variable allowance as compensatory allowance depending on the cost of living index since September 1983 and the same had increased from Rs.50 in December 1983 to Rs.176 in December 1986. The other demands were also rejected after due consideration and the same are also not pressed before us.

6. The learned advocate appearing for the petitioner union has not seriously disputed the fact that the undertaking is closed since 1.1.1990. However, it is vehemently argued that merger of dearness allowance with the basic salary was a unilateral and illegal change in the conditions of service, and as such they were not accepted by the workmen. In this context, it has to be noted that increase in monthly salary was demanded by the workmen with effect from 22.8.1984 and the demands of the workmen were referred by the order dated 27.12.1985. Long before that, the employer had introduced since September 1983, a variable compensatory allowance depending on the cost of living index and the said allowance had increased by 252% within three years from 1983 to 1986. It was on this premise that the Labour Court had found no justification for the payment of separate dearness allowance. Learned advocate Mr.S.K.Jhaveri relied upon the judgment reported in AIR 1975 SC 171 and AIR 1978 SC 828 to emphasise that an implied agreement by acquiescence or acceptance of benefit was not binding on the workman and that the wages

should consist of basic rate of wages and a special allowance to accord as nearly as practicable with the variation in the cost of living index.

7. It was further submitted that the employer could not have done away with the dearness allowance by merging it into the salary. Relying upon the judgment of the Hon'ble Supreme Court in AIR 1986 SC 1794, it was submitted that such change could not be brought into force without issuing a notice of change. It is also submitted, relying upon the judgment of the Hon'ble Supreme Court in AIR 1975 SC 1856, that the acceptance of benefits flowing from a settlement even by the workmen who were not parties to it does not operate as an estoppel against raising the same demands. It was further submitted that if there were no comparable concerns engaged in similar industry in the region, it was permissible to look at the other industries as nearly similar as possible in the adjoining or other region and that the employer unit was in a sound financial condition to bear the additional burden of dearness allowance.

8. As it is pointed out earlier from the impugned award, the Labour Court has, in fact, considered the aspect of other comparable units as well as the pay scales prevailing at the corporate office of the employer company. It is also seen that the workmen were in receipt of variable allowance known as "compensatory allowance" which varied with the cost of living index and instead of remaining fixed at Rs.225, as demanded by the workmen, it varied with the cost of living index at the interval of three months. Thus, in the facts and circumstances, we find no reason to interfere with the impugned award. The special Civil Application is, therefore, dismissed. Rule is discharged with no order as to costs.

(KMG Thilake)

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